

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

GAIL J. GALLOWAY,	:	
Plaintiff,	:	No. 1:CV-00-0649
	:	
v.	:	(Judge Rambo)
	:	
PENNSYLVANIA BOARD OF	:	Electronically Filed
PROBATION AND PAROLE, et al.	:	
Defendants,	:	

MOTION FOR SUMMARY JUDGMENT

Defendants Joseph Smith, Daniel Roberts, George Johnson, Charles B. Giornesto and William Ward,¹ by their attorneys, move for judgment in their favor in the above captioned case.

¹ Plaintiff named a number of state employees and officials in his original complaint and amended complaint. In the January 28, 2004, judgment order, the court of appeals affirmed the dismissal of all claims except plaintiff's "Fourth Amendment claim of false arrest/false imprisonment." It did not identify which of these defendants remained. However, plaintiff told defense counsel after remand that he agreed the majority of these defendants were not involved in this claim. Defense counsel understands the following defendants are not targets of the remaining claim: the Pennsylvania Board of Probation and Parole (BPP); a present

As this Court explained in its March 3, 2004, Order, the sole issue on which the Court of Appeals remanded this matter was whether plaintiff was arrested on June 1, 1998, without probable cause in violation of the Fourth Amendment. The declaration of Joseph M. Smith, the only defendant on the scene at the time of plaintiff's arrest and the person who is solely responsible for that decision, explains that Smith arrested plaintiff for constructive possession of a number of weapons found in plaintiff's home.

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Attorney General

By: s/Francis R. Filipi
FRANCIS R. FILIPI
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Date: May 28, 2004

and former Board attorney, Arthur Thomas and K. Scott Roy; former Governor Thomas J. Ridge; James Morgan, former Superintendent of the State Correctional Institution at Smithfield; his former assistant, Sharon Burks; Seth Mendelsohn, a Deputy Attorney General; and Neil Mechling, the former Superintendent of the State Correctional Institution at Waynesburg. To the extent plaintiff disagrees with this recollection of that conversation now, the individual defendants (as is true of all defendants except Joseph Smith) were not personally involved in the decision to arrest plaintiff on June 1, 1998 and judgment should be entered in their favor for this reason. The BPP, as a state agency, enjoys Eleventh Amendment immunity.

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CERTIFICATE OF NON-CONCURRENCE

I, Francis R. Filipi, hereby declare that I attempted to obtain the concurrence of plaintiff in defendants' motion for summary judgment but that as no one answered his phone it could not be obtained. However, given the prior actions of plaintiff it is reasonable to assume that he would not concur.

s/Francis R. Filipi
FRANCIS R. FILIPI
Senior Deputy Attorney General

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CERTIFICATE OF SERVICE

I, Francis R. Filipi, Senior Deputy Attorney General for the Commonwealth of Pennsylvania, Office of Attorney General, hereby certify that on this 28th day of May, 2004, I caused to be served a true and correct copy of the foregoing document titled Motion for Summary Judgment by depositing same in the United States Mail, first-class postage prepaid to the following:

Gail Galloway
R.D. #1, Box 30
Petersburg, PA 16669

s/Francis R. Filipi
FRANCIS R. FILIPI
Senior Deputy Attorney General

